**CITY OF BELMONT**

**PLANNING COMMISSION**

**SUMMARY MINUTES**

**TUESDAY, APRIL 7, 2009, 7:00 PM**

**Chair Parsons called the meeting to order at 7:00 p.m. at One Twin Pines Lane, City Hall Council Chambers.**

## 1. ROLL CALL

Commissioners Present: Parsons, Horton, Mercer, Mayer, Mathewson, Reed, Frautschi
Commissioners Absent: None

Staff Present: Community Development Director de Melo (CDD), Deputy City Attorney Kane (DCA), Recording Secretary Flores (RS)

## 2. AGENDA AMENDMENTS - None

## 3. COMMUNITY FORUM (Public Comments) - None

## 4. CONSENT CALENDAR

## 4A. Minutes of March 3, 2009

**Commissioner Mercer asked that the bottom of page 7, Other Items, be changed to reflect that she *requested*follow-up on the items listed.**

**MOTION: By Vice Chair Horton, seconded by Commissioner Mercer, to accept the Minutes of March 3, 2009 as presented with corrections as noted.**

**Ayes: Horton, Mercer, Mayer, Frautschi, Reed, Parsons**
**Noes: None**
**Abstain: Mathewson**

**Motion passed 6/0/1**

## 5. PUBLIC HEARING

### 5A. PUBLIC HEARING – 1301 Ralston Avenue

To consider a Conditional Use Permit to amend the Conditions of Approval for Planning Commission Resolution 1988-2 (Detailed Development Plan, Conditional Use Permit, Design Review). The request would establish two lots for the subject property. (Appl. No. PA 2007-0062) (Continued From December 16, 2008 Planning Commission Meeting)
APN's: 045-190-040, 045-190-030, & 045-170-010
Zoning: PD – Planned Development
CEQA Status: Recommended Categorical Exemption per Section 15301
APPLICANT: Joel Roos and PAMI PCC, Inc.
OWNER: RV California, LP
PROJECT PLANNER: Carlos de Melo, Community Development Director (650) 595-7440

Vice Chair Horton recused herself from discussion of this item based on living in proximity to the subject site.

CDD de Melo summarized the Staff Report, recommending denial of the requested Conditional Use Permit (CUP) to amend the Conditions of Approval for Planning Commission Resolution 1988-2.

- Questions from Commissioners Mayer, Reed, and Frautschi, with by responses from CDD de Melo and DCA Kane.
- Presentation by the applicant, Joel Roos, Vice President of Development for Pacific Union Development Company.
- Presentation by Chris Griffith, Attorney with Ellman Burke Hoffman & Johnson, a San Francisco- based law firm specializing in real estate land use and representing the applicant.
- Questions from the Commission and responses thereto by Mr. Roos and/or Ms. Griffith.
- Chair Parsons opened the Public Hearing. No one came forward to speak.

Verbatim Transcript attached.

**Motion: By Commissioner Frautschi, seconded by Commissioner Mathewson, to close the Public Hearing. Motion passed 6/0/1 by a show of hands, with Vice Chair Horton recused.**

- Comments by CDD de Melo.
- Question by Chair Parsons regarding parking, with response from staff.
- Response by DCA Kane to issues raised by the applicant and his counsel.
- Concluding comments by Commissioners Mayer, Reed, Mercer and Frautschi.

**MOTION: By Commissioner Frautschi, seconded by Commissioner Mayer, to adopt the Resolution denying a Conditional Use Permit to amend the conditions of approval for Resolution 1988-2 for 1301 Ralston Avenue(Appl. No. 2007-0062).**

**Ayes: Frautschi, Mayer, Mercer, Mathewson, Reed, Chair Parsons**
**Noes: None**
**Recused: Horton**

**Motion passed 6/0/1**

Chair Parsons announced that this item can be appealed to City Council within 10 calendar days.

Vice Chair Horton returned to the dais.

## 6. NEW BUSINESS

## 6A. Election of the Planning Commission Chair and Vice

Chair Parsons nominated Vice Chair Horton to be Chair of the Planning Commission for the following year. There being no other nominations, Jackie Horton was elected 6/0/1 by a show of hands, with Commissioner Horton abstaining.

Commissioner Reed nominated Commissioner Mayer as Vice Chair. There being no other nominations, Robert Mayer was elected 6/0/1 by a show of hands, with Commissioner Mayer abstaining.

## 6B. Belmont Zoning Ordinance (BZO) Discussion Regarding LotCoverage, Hardscaping, and Parking in Front Yards.

CDD de Melo summarized the Staff Memorandum, noting that this subject was the number one ranked item looked at by Council on the Community Development Department's 2009 Priority Calendar. He reviewed the

applicable sections of the current Belmont Zoning Code and asked for feedback from the Commission. He said that he had previously distributed an email he had received from a property owner about issues related to paving, hardscape and circular driveways.

Commissioner Reed asked if the topic of standard 20 x 20 garages on small lots would be part of this discussion. CDD de Melo explained that that would be part of a discussion on parking requirements, which might be ranked number 2 on the Priority Calendar. Commissioner Reed suggested that the garage and driveway requirements are a more important topic for him than storage sheds.

Chair Parsons opened the meeting for public comments.

Chuck Rinaldi, Belmont resident, provided a history of his lot and spoke of his desire to have a circular driveway. He believed the topic was under consideration because he brought it up with CDD de Melo, and explained that he did some research on why circular driveways are illegal in Belmont but found that nobody knew why they are illegal. He invited Commissioners to look at his lot, adding that 21 of 22 of his neighbors have circular driveways, and he has a signed petition that says they would love to see a circular driveway to finish his project.

Responding to Commissioner Reed's question about the rationale behind prohibiting circular driveways, CDD de Melo stated that it was part of a package of zone text amendments in 1996 and he surmised that it was related to excessive paving and the aesthetic impact of 1 to 6 parked cars. Commissioner Frautschi added that another reason was the reduction of on-street parking due to more curb cuts. Mr. Rinaldi stated that on Escondido there are no curb cuts; it is all asphalt and very rustic and that if he put in a circular driveway it would not take away any type of parking spaces for anybody on that street. CDD de Melo concurred that there are certain streets in Belmont where there is an abundance of on-street parking, and adding a curb cut to create a circular driveway most likely would not have an impact, but that there are other streets within the City where that is not the case. He noted that it is difficult to create an ordinance that is going to have a different application in different areas of the City, and that irrespective of whether it's a rolled curb or not, if a new curb cut is created for a circular driveway, then there is an on-street parking space that is taken away. Mr. Rinaldi added that, due to the size of his lot and home, a circular driveway will not take away from the aesthetics of his property and that there are 7 or 8 circular driveways in his area of Escondido. He said that the way the ordinance was written was that once you take it out you can't put it

back, and when he was doing his remodel there were pieces of asphalt in that area, which is what gave him the idea of having a circular driveway.

Chair Parsons commented on the history of garages, noting that the wealthy never kept their horses near their house. He thought the Commission could consider allowing a circular drive on some of the larger lots or lots that are on designated busy streets. He believed that some of the small lots that are on Ralston absolutely need circular drives to get into their house. He suggested that if they are concerned about cars parking on the driveway they could limit the width of the driveway to 12', for example, so that cars would not be stacked there for storage because then they would not be able to use the driveway. CDD de Melo added that the homes that have circular driveways on Mr. Rinaldi's street are attractive since there is landscaping in the middle and trees on either side of the driveway to shield any presence of cars from the street. He said that there is appropriateness to a circular driveway within certain areas of the city and on certain size lots.

Chair Parsons determined that there was no one else in the audience who wanted to speak on this topic.

Commissioner Mayer suggested that a sub group be formed to come up with some ideas. Chair Parsons concurred and CDD de Melo stated that two Commissioners could work with staff to draft some suggestions. Vice Chair Horton suggested that they put forth their comments at this meeting.

Responding to Commissioner Frautschi's question, CDD de Melo stated that a circular driveway is available if one would seek a Variance to Section 8.2.6. Discussion ensued regarding Commissioner Frautschi's understanding from friends that the County charges a fee for driveways in Belmont, and that Belmont's permit center requires permits and fees for repaving a driveway. Commissioner Frautschi will determine why the County charged his friend a fee and the amount, and CDD de Melo will determine with the Permit Center what the rules are regarding repaving a driveway.

Commenting on the circular driveway, Vice Chair Horton stated that she knew they could not define by neighborhood, but felt that they could define the suitability of a circular driveway by lot width, the setback of the house and the availability of street parking, and that they should consider safety and some amount of convenience along with aesthetics, the width of the driveway, and require landscaping and perhaps a pervious surface.

Commissioner Mercer related her thought process on this topic, making the following points:

- She had done a lot of homework, first going through all the zoning and finding references that they will be looking at.
- Driveways:
  - Section 4, which is residential, under single-family front yards is where you find that the driveway shall be 18' long.
  - Section 8.2.6 about off-street parking is where you learn that you can't have a circular driveway.
  - Section 8.3.2 about off-street parking is where you learn that your driveway can't exceed 25' width at the street and can't be less than 12' wide.
- Accessory Buildings:
  - In Section 4.2.1 you can find that accessory structures are permitted, and in that same section it describes accessory structures on corner lots.
  - Section 9.5.4 has this little bit of code that accessory structures shall not occupy more than 40% of the required yard. She believes that had to be a typo.
  - Section 9.7.3 says that in the R Districts a storage accessory use can occupy any yard area, and then finally you get further down and it talks about it not being less than 5' from the main building.
- Landscaping:
  - Discussion is very minimal and really only detailed in commercial districts.
- She felt that they need to start by asking the following global questions:
  - What is the scope of what we're trying to do? Are we really just looking at residential or are we going to try to wrap our arms around commercial hardscape as well?
  - Where do we want to put this in the code? Is it under General, is it under Residential and Commercial or is it under some new section we create? She felt that they need to decide and try to consolidate a lot of these things into one area or into a couple different areas.
  - Then the question is, what is the vehicle for hardscape? Are we looking at a total lot or just the front lot, are we looking at the yard area that's left over after we've put the footprint of the house on it or are we looking at the whole of the house plus the other permeable, and is it going to be a percent or is it going to be a certain number amount – a minimum and maximum?
- First, she thought they need to decide on the scope and what portion of the code they want to put it in.

CDD de Melo stated that he would recommend that they focus on residential. He thinks a lot of questions regarding the commercial aspect will

be taken care of when they look at the Zone Text Amendments that are forthcoming within the next 45 to 60 days as part of the General Plan effort.

Vice Chair Horton asked if there is anywhere that metal shipping containers are specifically excluded as accessory buildings. In addition, she raised the issue of adding an apartment above a detached garage, which is not a possibility without exceeding the height limit for accessory buildings. It needs to be addressed relative to lot size and setbacks.

CDD de Melo stated that the ordinance needs to be written with specific numbers because it will be difficult to write by neighborhood. They want to get close to ordinance language that can be applied equally over the entire city and not be cumbersome to enforce, and that does not preclude somebody asking for a Variance.

Commissioner Mayer said that there will always be times when subjects are divided up in an ordinance, making the point that a good index with cross references is essential.

DCA Kane added that it is not uncommon to have the cross references in the text of the code itself. In this way, when a section is amended you can make sure to amend the cross references to it so that they all match. An index is useful but it is not necessarily operative from a legal perspective, whereas if it is in the text of the code then it actually requires people to notice the cross references and puts them on notice that they are all part of the same requirement.

CDD de Melo will plan to bring this back to the Commission after the Council adopts the Priority Calendar and invited written comments from Commissioners in the meantime. With regard to looking at the Definitions, he asked them to only look at Definitions related to lot coverage, setbacks, accessory buildings or uses.

## 7. REPORTS, STUDIES AND UPDATES:

CDD de Melo reported as follows:

### 7A. Motel 6 – 1101 Shoreway Road

No update at this time.

### 7B. NDNU (Koret) Athletic Field

No update at this time.

### 7C. Charles Armstrong School – 1405 Solana Drive

The next neighborhood meeting between City staff, Parks & Rec Commission and neighbors most likely will be in May. Staff has had some phone discussions with the school folks and they are shoring the results of the January meeting with their full Board; things are very encouraging.

**7D. Ralston/US-101 Landscape Project**
No update at this time.

7E. San Mateo Development – North Road/43rd Avenue
He had talked to the property owner and made it clear that the City of Belmont will support the existing driveway but not an encroachment permit for a second driveway. A meeting was scheduled for 4/17 for him and Associate Planner Walker to meet with the owner and the project engineer and architect. He invited Chair Parsons to attend the meeting. The meeting is exploratory from their end to work on alternatives.

Chair Parsons asked about the other adjacent property that had suddenly came in and paved. CDD de Melo did not have the status of that development but believed a Stop Work Order had been issued and imagined that the developer would have to restore it back to what it was before.

Chair Parsons said that he had discussed this issue with some of the neighbors, a Finance Commissioner and two Council members, and he felt that the City needs to be proactive on North Road because what he thought was going to happen is starting to happen. He believes Belmont needs to put a project together to rehabilitate the City's right-of-way all the way down that side of the street so that it is very clear to all of the businesses on the other side that this is a residential neighborhood and Belmont is not going to allow what they think they're going to get away with. He suggested the tree fund or the settlement from the trees that were cut down on El Camino as a source to fund some kind of a small project along that road with a fence and some landscaping. He asked that staff get together with the City Manager and maybe Parks and Rec and whoever they need to work with to see what can be done.

Commissioner Frautschi asked why the City is taking the stance of supporting the driveway that is currently there. CDD de Melo responded that it is based on building permits on file at the City of San Mateo and the County for an existing building built in the 40's and 50's. San Mateo had permission, based on a record search, to have a driveway leading to the rear of their property. It is difficult for the City to now take the position that they're not allowed to have any access to the rear of that building by a driveway depression. They have not found any record of an encroachment permit approved by the City of Belmont, but the building was built well

before the City ofBelmont even had a process in place to require an encroachment permit. Staff is going on the assumption that that was a legal improvement in the 40's and 50's and the developer was legally allowed to have access to provide parking for that building as part of that improvement; the City of Belmont is legally on solid ground on one driveway but also legally on solid ground to say that we are not required to grant a second one. Commissioner Frautschi asked what the City will do when the tenants of the building start parking on Belmont's streets. He pointed out that the City receives no tax benefit, just wear and tear on City streets and hassles to the neighbors. He believes that since this is a new project, Belmontshould have been included in the planning and since it was not, the City's stance should be that the driveway is not grandfathered in and we need to make sure it is right for the neighbors there. In his opinion, the City needs to close the access and tell them if they want parking they should park in San Mateo, or be prepared to pay some sort of fees to maintain North Road, to landscape the whole area and put up a fence or something.

Commissioner Reed thanked Chair Parsons for his leadership on this issue.

**7F. 900 Sixth Avenue – BelmontVista Facility**
No update at this time.

**7G. Caltrain Landscape Area**
No update at this time.

**7H. Vancea Auto – 900 El Camino Real**
Vancea Auto has moved to San Carlos, therefore this item has been addressed. The property is for sale. Commissioner Reed asked if the City has interest in acquiring that property. CDD de Melo responded that it is something the City is looking into. If the property is abandoned, including utilities, for 90 days any conditional use permits become null and void. Chair Parsons asked if the County has done an assessment for hazardous materials and the soils conditions under that property. CDD de Melo was not aware of any sort of health assessment there. The due diligence as part of any buyer would be to have a Phase 1 environmental done, potentially a Phase 2. It is within the redevelopment area and the City of Belmont is looking at a long-term strategy, and there are clearances that need to be given by the City Council relative to direction.

**7I. Parking Study – DowntownVillage Areas**
No update at this time.

**7J. High-Speed Train (HST) Project – San Francisco to San Jose**

A scoping comment letter that framedBelmont's concerns at this point was sent to the rail authority. The things to be dealt with will be when they get the proposed alignment and the Environmental Impact Report. There will be a town hall meeting sponsored by Assemblyman Jerry Hill on April 23rd in the Council Chambers.

**Other Items**

CDD de Melo reported that the 4/21 Planning Commission meeting will include a **Study Session on the Housing Element**, which will then be on the 4/28 City Council agenda. The **Downtown Specific Plan Village Zoning** is tentatively scheduled for the 6/2 Commission meeting and all of the pieces of the **Draft Housing Element** for 6/16. The Council will also have tentatively scheduled meetings on both the Village Zoning and the Draft Housing Element in June.

Commissioner Mercer reported on her attendance at a meeting of the **Green Advisory Committee.** There was a report from a subcommittee that is looking at building code enhancements that would lead to greener building standards. They are looking at a set of guidelines that have been adopted by the County so that there would be some uniformity for prospective developers, and there is a point system established by two different groups - BIG (Build it Green) and LEAD. CDD de Melo added that Chief Building Official Nolfi and Senior Planner DiDonato have attended a number of seminars related to green building ordinances and it is hoped that the City will have at least one building inspector certified to inspect and review project plans for green buildings. He said that green construction and landscaping is becoming commonplace and whether and when it becomes mandatory as part of all projects remains to be seen. Vice Chair Horton added that a good place to start is with debris removal.

Chair Parsons noted that the **Notre Dame de Namur Student Body Association** had invited some staff and others to attend a welcome dinner scheduled for that evening, but it had been cancelled due to budget and attendance issues. He added that they plan to put the funds that they had set aside for that dinner into a community garden.

**7. CITY COUNCIL MEETING OF TUESDAY, APRIL 14, 2009**

Liaison: Commissioner Mathewson
Alternate Liaison: Commissioner Mercer

Commissioner Mercer stated that she will not be here for the next Planning Commission meeting.

## 8. ADJOURNMENT:

The meeting was adjourned at 9:26 p.m. to a Regular Planning Commission Meeting on Tuesday, April 21, 2009 at 7:00 p.m. inBelmont City Hall.

_____
Carlos de Melo
Planning Commission Secretary

BELMONT PLANNING COMMISSION MEETING OF APRIL 7, 2009

VERBATIM TRANSCRIPT OF DISCUSSION OF ITEM 5A
PA2007-0062 – CONDITIONAL USE PERMIT FOR 1301 RALSTON AVENUE

Commissioner Mayer: Since the lot adjustment was never recorded, what is staff's position as to the existing condition of this property? CDD de Melo: Staff maintains that to actualize that 1988 approval it is required for those 3 lots to be merged to one – we have made that overture to the applicant to re-record that action merging the 3 lots to one – that has not taken place to this day. In terms of how the City views this application, we do not view it as a 3-lot to a 2-lot request, we are viewing it as a 1-lot to a 2-lot request, hence the need for the action to be a CDP amendment. Commissioner Mayer: Did the applicant ever give any reason for their refusal for their choice not to proceed with the strategy you have suggested? CDD de Melo: In terms of last year or back in 1988? Commissioner Mayer: No, recently. CDD de Melo: We could probably have them answer that, but certainly the applicants have made some overtures to City staff that they wanted to move forward with the current request – they had a valid application that they paid fees for and they wanted to move forward with it. They were aware of the City's position on the matter, and have chosen to come forward tonight as part of tonight's review. The conversations have been productive, they've been cordial, but there has not been a withdrawal of the application, so we are staying ready, willing and able to move forward on an alternative request based upon staff's recommendation.

Commissioner Reed: I just want to follow up on the 3 lots vs. 1 lot vs. 2 lots. If this was never truly filed there exists 3 lots today. CDD de Melo: Today, according to the Assessor's records, there are 3 lots that exist today. Commissioner Reed: The other question I have, Condition 20 from 1988 – is there a statute of limitations on this – if it was never fulfilled – there are 3 lots today – does this ever expire? CDD de Melo: Certainly in the City's research it does not indicate that this condition would then get voided by the passage of time. It is a condition that was never fulfilled; the City does have the right to move forward and request that the applicant fulfill that condition of approval. Certainly in our research the City's legal

council has determined that it is something that the City can continue to request. The applicants have taken a benefit some 20 years now on additional buildings being allowed, approved, constructed and taken benefit of, and a condition of approval as part of that benefit has not been fulfilled.

DCA Kane: It's our view that the condition runs with the land as with any other aspect of the conditional use and therefore it continues to be something that is a legal effect. The other issue is that you have this factual circumstance where the deed creating the single parcel was in fact made – it just didn't happen to be recorded. Both items were submitted together – the County Recorder only stamped one of them – and so it created this… there's clearly an intent to follow through on the condition – which is why, in our opinion, neither the original owner nor the City went back and then double checked to make sure that they were recorded individually when in fact only one was recorded. So I think that's why we have this oddity in terms of the Assessor's records.

Commissioner Reed: This is a clerical error. DCA Kane: This is a clerical error at the Assessor's office or whoever submitted the deed. We don't know the exact factual circumstances at this point – the person who walked it down there I guess is not available but at any rate this was not a – to borrow language from another area of law – this was not an open and notorious refusal to flaunt the requirement to merge it into one lot, it was, from the City's perspective and the then owner's, it was a good faith attempt to do that and we just didn't realize it hadn't happened in terms of the Assessor's records.

Commissioner Reed: So if it hasn't happened can they request a modification of the condition of approval? DCA Kane: Because it's governed by the overall planning district, that document needs to be changed in order to do this. Our view is that the Commission's hands are tied by the overall zoning issue here and that that's the area in which this needs to be amended so that you can approve or not this proposal or some other like it. That's the mechanism that this has to go through.

Chair Parsons: Any questions at the other end of the table?

Commissioner Frautschi: I just had one. Suppose a CDP amendment is not filed in the future? What recourse does the City have. CDD de Melo: Well, the City could continue to compel the applicant to record that 3-lot merger to 1-lot merger. In terms of where the action would go from there, I don't… Commissioner Frautschi: I'm thinking about, is there an option for CUP enforcement. CDD de Melo: That's a good one – I guess you could look at all 20 of those CUP conditions of approval – you continue to have one

that has not been fulfilled. Don't believe there's a statute of limitations on code enforcement for any condition of approval, whether it be for this kind of an action or any other. You could have an auto repair use that was approved back in 1985 and there required to close their shop at 5:00 and if they continue to open until 7:00 that's a code enforcement action. So this is a valid condition of approval, it was adopted by Resolution, it was not fulfilled, you ultimately I believe could go to that step. We would like the procedure to be more cordial in terms of asking the applicant to do so and get this taken care of, but there is some merit to your question.

Chair Parsons: Would the applicant like to make a presentation?

Joel Roos, Vice President of Development for Pacific Union Development Company, described the history of the property and the amount of community outreach that preceded their return to the Commission in 2005 with a project scaled down to about 50% of the original proposal. The proposal eventually went to Council, who voted against it out of fear of increased traffic. They accepted the fact that they would not move forward with this development even though they knew it would be a great asset to the City. They are now asking for a simple lot line adjustment which in no way puts the City in the position of accepting a development concept. Their request simply fulfills a contractual obligation of the current owners of Ralston Village and their partner who sold the property in 2005 – that is, to define the Ralston Village Alzheimer's community from the empty parcel to the west. The sale of the property was under way as they were going through their entitlement process and as such the two parcels were defined and the purchase and sale was defined accordingly. They now have a major title issue because of a document that was found in the bottom of a drawer after they had done an enormous amount of due diligence on this project dating back 10 years. He added that their request actually meets the lot line adjustment that is stated in the Staff Report of 1984 that reads: "The project is currently divided into 3 separate parcels. Since the proposal contemplates a unified development on the site, the existing interior lot line should be eliminated to allow for the construction over areas now bisected by the property line and to allow all improvements to be on the same lot." The improvements needed to be on one lot, so the currently proposed lot line adjustment absolutely meets the letter of that law. "The lines which now bisect the improvements these lot lines will now be adjusted to allow the lines to encompass the project improvements. Our request tonight absolutely meets the intent, our frontage meets the code, our onsite parking dedicated to the existing campus meets the minimum requirement. Commissioner Parsons was asking if there would be parking on one side or the other and yes, there's parking, but easement obviously allowed over on what we would call parcel 2, but the parcels were divided

up to provide for 52 parking spaces, which was mandated by the use permit for the existing Alzheimer's community. Absolutely we meet the letter of the law as far as parking goes. Fire access to and from the campus is not restricted in any fashion, and your decision to accept our lot line adjustment will not impact this community in any way shape or form. In closing, I want to speak about the fact that a lot has changed in the development community since the 1988 CUP – 21 years ago. I'm going back to school to understand what is happening in our world in the sustainable environment. The idea of approving a single story 45,000 medical office facility which is Ralston Village on a 9- acre parcel or land that was redeveloped on a site within a half mile of major transit and local shopping would never happen today. If you were to approve a project like that it would not only be irresponsible but it would be in direct conflict with our new SB 375, the State Senate bill focused on our future and our green house gas emissions. Our community must now live by these rules. It's all about making sure that suburban communities like Belmont are thinking regionally, not locally. Mind you, this project while we did not explicitly state it at the time we brought it to you 4 years ago, is a poster child for sustainability – it's a bulls eye for SB 375, it is a redeveloped site that is within a half mile walking distance to mass transit, walking distance to two retail and food centers, it was to be a medium high density project. The days of approving single-family single-story structures is largely history. I urge you tonight to accept our simple request, approve our lot line adjustment. And I'll turn it over to Chris Griffith, our attorney.

Chris Griffith, attorney with Ellman Burke Hoffman & Johnson, San Francisco based law firm specializing in real estate land use. This is all that we do. One reason I'm here today it because the staff report raises a number of what I would call legal issues in an attempt to I think put some constraints on the Planning Commission that just really aren't there. The first, which is the key, is that staff has said that the application that has been filed is the incorrect application. Walk through that – in 1988 there was approved by the city a CUP and a Detailed Development Plana (DDP). In the CUP there was a condition to merge the lots and staff has repeatedly referred to that condition as the 1988 condition to merge the lots. So the only thing that was approved in 1988 was a CUP and a DDP and some of the other – grading plan and what not - that went with that. If you look at your planning code, section 12.9 says that if you want to make a change to a DDP the way that you do that is you apply for an amendment to the CUP and you treat it in the same way as a conditional use permit application. That's exactly what we've done. To further back that up – its not just my reading of the code – on March 16 2007, two years ago, Mr. de Melo left my client a voice mail explaining what kind of application would be required in order to submit this lot line adjustment and make the change

that we're asking for tonight. And in that voice mail he said it will need to be a CUP amendment since it was a CUP that established the DDP in 1988 for the Belmontsite. He went on to say that the project description needs to illustrate the reasons why the CUP that was proposed will not be satisfied. That is, the condition of merging the 3 lots into 1. This voice mail does us two things: 1) at the time staff acknowledged that there were 3 lots, just as there are today. 2) staff specifically instructed my client to file a CUP amendment. He goes on to say there are 4 findings that have to be met in the affirmative for a CUP application and then refers us to website for the CUP application and states that we can use that application as the basis for our lot line adjustment application. Go down the checklist, he said, of the CUP to amend the DDP. So as I sit here tonight in the audience listening to staff say, oh we've been clear with the applicant – they've filed the wrong papers, that's all – it makes me angry because its just simply not true – it was Mr. de Melo's specific instructions upon which my client filed an amendment to a CUP. There's more -- because on the agenda for your meeting on April 1, 2008 – a year ago – that voice mail was 2 years ago – now we're a year ago, there was a staff report prepared, this exact lot line adjustment application was on the agenda – and the staff report, which I have a copy of right here – which I'm sure you all have in your files, not only recommended , staff recommendation was that you approve the lot line adjustment as a CUP amendment. It goes on to say that the condition to merge the 3 lots into 1 had never been fulfilled, that the amendment that my client was asking for was consistent with the intent of the original 1988 conditions, that it would have no effect. I notice the staff report this time mentions that you couldn't possibly approve it because there hasn't been a CEQA review. Well, there has because in this staff report it specifically says "the proposed addition is categorically exempt from the provisions of CEQA under a class 1 exemption because it doesn't propose any development or any physical changes to the environment. Staff has also said in the staff report that you can't possibly approve this conditional use amendment because the staff hasn't made the findings. Oh, but they have because in the April 1st 2008 staff report staff went through diligently and checked off every finding that's required for a conditional use application amendment and stated: "These findings can be made in the affirmative." So if I stand here today and I seem a little agitated maybe you'll understand why – staff is, for whatever reason, I believe misleading this Commission as to what they can and cannot do. Staff has certainly misled my client as to what they should and shouldn't do. In addition, when you're looking at the paperwork surrounding this alleged lot merger, my client first approached the City of Belmont with a development proposal for this site about 10 years ago. In all of those discussions, in all of that time, nobody said anything about hey, no, somebody did try to merge these lots. No, there was a deed that was prepared and there was just some clerical error. That didn't come up until a

little bit over a year ago that all of a sudden staff discovered a file that showed that these things had been done and now staff is attempting to assign some reasoning behind why it wasn't done. What they haven't mentioned is that it was the City that was supposed to record whatever documentation was submitted and it was the City that failed to complete the recording that would have merged the lots. So it's the City that failed to meet the condition, not the applicant. And to say – to try to imply that it is my client that has avoided this condition is also incorrect because obviously my client didn't own the property at the time. When my client bought the property, as far as they knew it was 3 lots – as far as everybody knew, it was 3 lots – and it wasn't until much, much later that anybody even brought up this condition. So, staff has said tonight that we refused to file the applications they've asked for and I just need you to know that that is not correct. We did in fact file the application that staff told us to and when my client came here ten years ago nobody said anything about the fact that this condition hadn't been fulfilled or that there weren't 3 lots. When my client's development proposal was rejected in 2005, nobody said, oh and by the way, you don't have 3 lots. Staff, said, gee, if you want to fulfill your contractual obligations why don't you file a lot line adjustment application, so my clients filed a lot line adjustment application, then staff said, oh, well, you can't just do a lot line application, you need to do the conditional use amendment, so then my client did the conditional use amendment and mind you that was 2 years ago, and so now when we come before the Commission again we finally get on the agenda again, staff says we have to do something else and it's a legislative approval, and that's simply not true. It's not called out in your code that way and it's not called out in any of the past actions on this project. One more thing on this topic. In the 2008 staff report, staff specifically states that the entire site -- that allowing this to go forward first of all the lot line adjustment does not result in any development and it says the entire subject site remains under the PD Planned Development designation. Any minor changes to the existing site design would require approval of an amendment to the DDP, which is what we're asking for tonight. Any significant modifications to the site, i.e., new buildings, would require approval and an amendment to the CDP, so staff's own report from a year ago characterized this as appropriate for a CUP application, and that's what we're asking you to do today. I also want to address just briefly, because what you have in front of you is a lot line adjustment. Some or all of you may be familiar with the Subdivision Map Act and the way that it works. One of the things that the Subdivision Map Act does is to standardize land divisions throughout the state ofCalifornia and in doing so it did take away some of the discretion from local governments. Specifically as regards lot line adjustments the subdivision map act says "a local agency shall limit its review and approval of a lot line adjustment to a determination of whether or not the parcels

resulting from the lot line adjustment will conform to the local General Plan, applicable Specific Plan, Coastal Plan, Zoning and Building Ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approvement of a lot line adjustment. This section of the Subdivision Map Act does constrain the City of Belmontas to what it may do in rejecting a lot line adjustment. While I certainly appreciate the City and the staff's efforts to keep me fully employed in my legal practice I really don't see what the issue is. My client is asking for a simple lot line adjustment – it's not the approval of any development – it doesn't commit the City to any development plan, but the refusal to do it is going to risk the City's exposure in litigation. And I don't think that that would benefit anyone except for me, I guess, which as you can see I'm arguing against my own personal interests. I urge you to please look at this for what it is. It's a simple lot line adjustment, the correct application has been filed and you do not only have the discretion but I think the responsibility to approve it. Happy to answer any questions – I know I've thrown a lot of information at you.

Commissioner Mayer: What is the interest of the applicant in insisting upon a division into two lots rather than a combination into one lot? Ms. Griffith: My client has a contractual obligation with the operators of the current existing facility that is there to divide these interests. That's it we have a contractual obligation – we can't just let it go. I have the agreement here with me – when my client entered into a purchase agreement to purchase this property one of the conditions was that the land where the existing development is, the existing buildings and the parking that is necessary for it and all the attendant improvements, be divided from the rest of the land and so we have an obligation to do that whether we can ever develop that other parcel or not.

Chair Parsons: Are you maintaining ownership of both parcels? Ms Griffith: No, not at this time. What we have is a purchase agreement. Chair Parsons: For the people who operate Silverado to purchase proposed parcel 1? Ms. Griffith: I believe that's right. Right.

Commissioner Mercer: Did your client buy the property from Community Psychiatric Centers? Mr. Roos: I don't recall whether it was actually the Psychiatric Center or whether there was an interim owner butSunrise purchased it from Pacific Coast Capital Partners, who is our partner. It's been turned over. Commissioner Mercer: I find it interesting that on December 1, 1988 the then Vice President of Community Psychiatric Centers submitted and had notarized a lot consolidation certificate combining three parcels into one single parcel. Is that disputed? Mr. Roos: It has never been in our files. Commissioner Mercer: So by the fact that this property owner submitted and had notarized that these parcels are

all one, clearly he was knowledgeable in 1988 that this was one parcel, not 3, from his perspective, so somewhere along the line some seller has misrepresented these facts. Ms. Griffith: I don't know whether I could speak to whether somebody had misrepresented along the way, clearly there was a condition, clearly there were some steps taken to implement that condition and clearly the process was not completed. Typically, when purchasing a property of this type the purchaser relies primarily on information that they get from the assessor and from the title report in terms of determining how many lots there are, that's typically what you would rely on. I think it's clear that the due diligence that I would recommend was probably not done at some point when somebody purchased something, but I can't tell you where that was or who may or may not have misrepresented. I can tell you that when my clients purchased the property they understood it to be 3 lots.

Chair Parsons opened the Public Hearing. No one came forward to speak.

**Motion: By Commissioner Frautschi, seconded by Commissioner Mathewson, to close the Public Hearing. Motion passed 6/0/1 by a show of hands, with Vice Chair Horton recused.**

CDD de Melo stated that he appreciated the comments from Joel and Chris and their perspective on the matter. A couple things: I want to take the commission back to 1988. In a perfect world, if this condition was actualized and these lots went from 3 to 1 the applicant's current request, according to our current zoning ordinance for planned developments, would require a CDP amendment – plain and simple. Based on a number of factors – modified setbacks, buildings to their proximity to a newly described lot line, floor area ratios associated with the amount of buildings on adjusted parcel 1 as opposed to 1 parcel of 17.5 acres. So that floor area ratio would change, it would get higher, the setbacks would get smaller, and your Planned Development Ordinance, Section 12, clearly delineates that when these key development standards are modified the vehicle to modify is a CDP amendment, not a DDP amendment. Now, I understand, correspondence between staff and the applicant back in 2007 relative to direction on seeking an entitlement to do what they are currently seeking to do but what I also would like to illustrate that its been over a year since the applicants have been fully aware that the vehicle to seek what they are seeking is via a CDP amendment and not a CUP to amend a DDP. That has been made abundantly clear to them both in written correspondence and in voice mails, and in fact, I think as part of your staff report there is correspondence back and forth between the City's legal counsel and the applicant's legal counsel about the files that were discovered, the issues that are apparent relative to

their current application, and the remedy to seek what they choose to seek. So this isn't something that sprung up yesterday or a couple weeks ago – this is something that has been fully clear to them for over a year now that this is the direction their application must take. They chose not to do so – they chose to move forward with the application. It has been scheduled for a couple of public hearings - they've been continued at least once at the applicant's request. If the Commission recalls, this was on your December 16, 2008 Planning Commission meeting – the applicant requested that it be continued – we had it scheduled for March 17 – continued. So we're here tonight – we understand concerns that the applicant brings to the table about direction on an application, on frustration related to a process that went from 2000 to 20005 with not a successful result for them, but in terms of this current request we're simply pointing out that an incorrect application was filed and we've made an overture to the applicant that again, we are ready willing and able… In fact, we've even made overtures to the applicant that we will apply fees paid for their current entitlement request to be applied to a CDP amendment request – that's been made clear to them – we will move quickly on an application – that's been made clear to them – so while I understand their concern about what's transpired up until April 7th, City staff is willing to move forward with the recommended request that the City is requiring for this action. Does that answer other questions that they have. I'm not sure if Kathleen wants to add some more.

Chair Parsons: Joel made a comment about how all the improvements would be one parcel but that's clearly not the case in any case. Right? Some of the existing parking which apparently was a part of the project would now be on parcel 2. Is that not correct? CDD de Melo: Correct. All of the buildings – all of the physical structures – would be on adjusted parcel 1, whereas a large bank of parking would be on adjusted parcel 2. Now they're indicating that they have cross easements to allow access. Irrespective of cross easements, if you look at your PD Zoning regs under CDPs, if you change a fundamental development standard like the height of a building, the maximum amount of floor area, a floor area ratio, a setback, a parking requirement, something along those lines, the vehicle is not a CUP to amend a DDP, the vehicle is a CDP amendment. That's been made clear to them. I'm not sure what more to say.

DCA Kane: Counsel for the applicant brought up some issues. The issue of the Subdivision Map Act is actually treated in a letter from Marc Zafferano that is included in your packet dated July 10, 2008, albeit in an abbreviated form, but his take there is that it does not preclude the action that staff is advising here. The other issue is that the condition runs with the land and that it is the duty of someone purchasing that land to find out what is

burdening that land, be it an easement, be it a condition, that's part of what you do when you purchase, and so that is something that continues to pertain legally here. The third brief point I would make is that there are a number of cases which I'm sure were very frustrating to the plaintiffs who brought them but which hold very clearly that recommendations by staff including, by the City Clerk or anybody else, doesn't bind the City if it turns out that that recommendation was incorrect. So even though Carlos has said that in the last couple of years he's been quite clear about his, the initial voice mail, assuming it was left as described, does not create a right in the applicant that doesn't otherwise exist – the rights that the applicant has are determined by the code that we work under, not by what I or Carlos or anybody else advises them if it turns out later to be a mistake.

Commissioner Mayer: So fundamentally what we're talking about here is not the end that they are seeking but the way that they are seeking to achieve that end. CDD de Melo: That's it in a nutshell. The applicants, even if they were to reposition their application for a CDP amendment, they would be requesting the exact same thing. But again, we'd be evaluating the project under different findings, we wouldn't be evaluating it under a CUP to amend a DDP, we're evaluating it under a CDP amendment. One may say, well, it's so simple, we just check a different box. It's not that simple. We have to look at it based on different findings - there is a different outcome. We are looking at consistency with the City's General Plan – that is one of the main findings associated with a CDP – the application on its cover may be the same – we're still looking at a lot line adjustment – but the entitlement by which that request is judged is different, its profoundly different, but again, staff is indicating that the vehicle for them to seek and get what they want is not via a CUP, its via a CDP. Commissioner Mayer: Could one say that the obstacles before them and that recommended path might be more difficult to…. CDD de Melo: Certainly there's less findings. There are different findings. There's definitely a higher hurdle because we're looking at General Plan consistency rather than just the 4 finding associated with a CUP. It requires a, I wouldn't say exhaustive, but a pretty thorough review of the City's General Plan relative to its goals and policies as to whether it is appropriate to grant the CDP amendment. That's different than a CUP.

Commissioner Reed: I have one last question. Given the clerical error nature of this issue, would a rigorous due diligence process when the property transferred from one owner to another have discovered this condition of approval or was it something that was something that was so hidden, so buried, that it would impossible to find out? DCA Kane: Because the instrument was not recorded, it wouldn't show up on a title search, however, the condition is something else and that's something that you would do a different kind of search to find out about when you'd be looking for that

specifically. So you may not have found necessarily unless the existing owner told you about it of the actual effort to join the 3 parcels, but you would find the requirement to join the 3 parcels. It's hard to say whether you would stumble across an unrecorded instrument.

Chair Parsons: But it would be due diligence on the part of the buyer that if you knew he was developing a planned unit development or anything like that that they probably ought to go to the City to see if there were any possible…… DCA Kane: Its certainly up to any given buyer to do whatever they want to including nothing about finding out what burdens the land but that doesn't affect the fact that the condition runs with the land and it continues to be a burden on that land just like an easement would be if your neighbor has always used your driveway, the fact that you don't inquire about that when you buy a house doesn't mean that the neighbor doesn't get to still use your driveway. The same thing here – one of those things that you have to look for and I would presume that the greater the sophistication of the buyer the more careful they would be, but everyone has a different approach to that and I don't know what the circumstances of this purchase were, whether there was time or anything else, but it doesn't affect the binding nature of the condition – its there whether you find out about it or not.

Chair Parsons: Any further discussion, or does someone want to make a motion?

Commissioner Mercer: Do you want to hear our thoughts just for background? Chair Parsons: Yes, I do, if you have them. Everybody's being quiet. Commissioner Mercer: It's an unfortunate situation – it may well be time that this Planned Development be re-evaluated in light of the times and in light of our housing situation. However, that's not the question that's before us tonight. I suspect, although no one can prove it with the verbal exchanges and promises and whatnot, that what we might have here is a simple confusion of acronyms where what we were looking for was a CDP and what instead was interpreted that what we wanted was a CUP and its one little letter and muttered over a phone or written down quickly, yet they're significantly different documents. A CDP is what is in force on this parcel. That's what says we will allow x # of units per acre over this entire 3-lot which is now one planning district, one planned development. The CDP, Conceptual Development Plan, is what establishes that and so I fully understand that's what needs to be looked at and evaluated and changed and there's a lot of thought process that would go into that – whether we'd want a higher density there and whether the parking is adequate, blah, blah, blah, whereas that sounds a whole lot like a CUP, which is a Conditional Use Permit, but which is a whole different animal and I think we

very casually throw these out thinking that everyone knows what we're talking about and I think that very often it causes confusion without people even realizing it. What I have to fall back on is the intent of the original Commission and the original City Council who approved the Planned Development and the CDP based on a density and an intensity of use that they thought was appropriate for this parcel in this location, and I'm confident that a lot of thought was put into it at that time about the density, location, traffic, about this being sort of a transition property between a very low density park and a slightly higher density residential area that is being sort of a buffer zone for that, and until that's evaluated I could not approve a change to that CDP. If I were to look at this just as a CUP as the applicant has requested, even if I were to evaluate it on that, I can't make the findings – if you are evaluating a CUP one of the findings is the uses as shown on the approved CDO are being met, and they aren't, because the CDP specifies the density over the entire 3 parcels, not over 2 of the 3 parcels. So either way I come at it I'm afraid I can't make the findings to approve this and I regret that it's come to this and hope that the City can work it out with the applicant.

Commissioner Frautschi: I really didn't have that much to say but Joel and Ms. Griffith spoke and I've got to say something about a couple of things they said. I don't think, Joel, that characterizing the traffic study as a marginal impact is the way I remember it. And you might want to go back and look at that – I think you're mischaracterizing that. And then when you say that a document was found in the bottom of a drawer, you're trying to, in my mind, tell us something was up – the City was holding back on something and at the last minute they sprung this on us and that's not the case. I know that's not the case, because I was the one who requested for a complete search of the documents files and it was Jennifer Walker that found the file, and everyone that's involved in the process now was not involved in the process 10 years ago that you're complaining about when it initially happened, so your characterization is just totally off base there. And then a statement you made that the lot line adjustment will not affect your community in any way shape or form – I beg to differ with you. Because you're not just doing it for your contractual agreement because there's a way of doing that – you've had time to do that – there's something else down the line. I'm not going to put blinders on and say, no, they just want a lot line adjustment, that's all they're coming to us for. Who's being sincere here or insincere? And then I hate it when applicants bring their lawyers and they try to buffalo us. You said that our staff was putting legal constraints on us as Planning Commissioners. I choose to call it legal counsel – that's what their job is. Marc Zafferano in his letter of July 10th was very clear about the City's -- that was 2008 – the City's position on this. What you all had to do – and you come to us now whining about, well, you've done this,

you've jerked us around here, that's…. you know, it's just not true, its just not true. And I'm sorry, Ms. Grifrith, that we made you angry – this process has made you angry – I'm sorry that the client's fees to you can't constrain that anger because – our legal constraints don't go in that direction. Whether it was misspoken, CUP, CDP amendment, there's been a year that's passed – its been very clear what's been required – and to kinda throw the smoke screen on us with the Subdivision Map Act - if we don't do this we're setting our City up for legal exposure – you gave me the answer in your own little thing there – it says we can do lot line adjustments or refuse lot line adjustments if we feel they violate our General Plan. You said General Plan, General Plan. I know what our General Plan says about this piece of property. I've been looking at this piece of property for 7 years. I wasn't there at the beginning when this started but you know you're playing catch up I know, and I don't mean to beat you up about this, but it just – and I'm not angry. Chair Parsons: You don't get paid enough to be angry. Commissioner Frautschi: Yeah, we get $25 a meeting. Anyways, we can't do this because it would violate the development standards that were set in 1988 – we're not allowed to do it – that is our constraint, and I support staff's recommendation and I appreciate staff.

Chair Parsons: Anything to add?

Commissioner Reed: No, I think it's very simple – I think condition 20 of 1988-2 needs to be fulfilled before any further discussion takes place.

Commissioner Mayer: I would agree by concluding that the due diligence on the part of the applicant was lacking in this case for whatever reason and for whatever justification and I simply don't understand why there is a refusal on their part to follow through on the recommended course of action by City staff. So I would support the staff recommendation.

Chair Parsons: I have some things I would add but I'm not, so I will ask someone to make a motion.

**MOTION: By Commissioner Frautschi, seconded by Commissioner Mayer, to adopt the Resolution denying a Conditional Use Permit to amend the conditions of approval for Resolution 1988-2 for 1301 Ralston Avenue(Appl. No. 2007-0062).**

**Ayes: Frautschi, Mayer, Mercer, Mathewson, Reed, Chair Parsons**
**Noes: None**
**Recused: Horton**

**Motion passed 6/0/1**

Chair Parsons announced that this item can be appealed to City Council within 10 calendar days.